

802 KAR 2:010. Negligence claims before the Board of Claims.

RELATES TO: KRS 12.027, 49.020, 49.040, 49.090, 49.120, EO 2020-708

STATUTORY AUTHORITY: KRS 49.020(5)

NECESSITY, FUNCTION, AND CONFORMITY: Executive Order 2020-708 ("Order") requires that the Kentucky Claims Commission be abolished and that the Board of Claims, and the Office of Claims and Appeals be established. The Order also sets forth the powers and duties of the Board of Claims and the Office of Claims and Appeals and authorizes the board to promulgate emergency regulations necessary to carry out the provisions and purposes of the Order and the board's statutory authority. KRS 49.020(5) authorizes the board to promulgate administrative regulations that are necessary to carry out the provisions and purposes of the board's statutory authority. KRS 49.220(1) authorizes the board, with exclusive jurisdiction, to investigate, hear proof, and to compensate persons for damages sustained to either person or property as a proximate result of negligence on the part of the Commonwealth, any of its cabinets, departments, bureaus, or agencies, or any of its officers, agents, or employees while acting within the scope of their employment by the Commonwealth or any of its cabinets, departments, bureaus, or agencies. This administrative regulation establishes the procedures governing these claims.

Section 1. Definition. (1) "Board" means the Board of Claims.

(2) "Office" means the Office of Claims and Appeals.

Section 2. Filing Claims. Form and content. A claim shall be legibly written, typed, or printed and contain:

- (1) The name, address, telephone number, and email address of the claimant;
- (2) The amount of the claim; and
- (3) A statement of the facts that:
 - (a) Show the claimant may be entitled to relief pursuant to KRS 49.010 through 49.180; and
 - (b) Enables the agency against which a claim is made to investigate the claim and prepare its defense; and
- (4) The signature of the claimant and counsel for claimant, if any.

Section 3. Rules Applicable to All Filings. (1) Filings. All documents may be filed:

- (a) In person or by private delivery to the Board of Claims, 500 Mero Street, 2 SC1, Frankfort, Kentucky 40601;
- (b) By mail to the address listed above; or
- (c) By electronic mail to <mailto:negligenceclaims@ky.gov>, if the document can be sent in one (1) electronic message.

(2) Service.

(a) Any party who files a pleading or motion with the board or hearing officer shall notify all other parties to the claim by serving upon each party a copy of the pleading or motion filed. A filed pleading or motion shall be accompanied by a certification stating:

1. That a copy has been served on each party, or if the party is represented by counsel, on the party's counsel; and

2. The method of service used.

(b) Service upon a party shall be made by delivering a copy to the attorney or party, electronic mail, or by mailing it to the attorney or party at the last known address. Service is complete upon mailing, unless the serving party learns or has reason to know that it did not reach the person to be served. Service by electronic mail shall be considered complete when

sent if properly addressed. Documents filed by electronic mail shall be considered received when sent if properly addressed.

(3) Extension of time. An extension of time to file a response, motion, other pleading, brief, proposed finding of fact, or conclusion of law shall be granted:

- (a) On agreement of the parties; or
- (b) Upon a showing of good cause.

Section 4. Representation in Proceedings before the Board. (1) If the claim is by an individual, the individual may proceed without an attorney or engage counsel to provide representation.

(2) An individual who is not an attorney shall not be permitted to represent any other individual or legal entity who is a party to the claim.

(3) In accordance with Supreme Court Rule 3.020, if the claimant is a corporation, joint venture, partnership, LLC, estate, or any entity other than an individual as identified in subsection (1), the entity shall be represented by an attorney on all matters before the board, including filing the claim.

(4) An attorney admitted to practice in another state, but not the Commonwealth of Kentucky, shall be permitted to represent a party before the board if the attorney complies with Supreme Court Rule 3.030(2).

(5) If an attorney is not identified in the claim form or is later retained to represent a claimant after the filing of the claim form, the attorney shall enter an appearance in the record within ten (10) days of being retained.

Section 5. Response to Claims. (1) Upon receipt of a completed claim, the board shall submit a copy of each claim to the head of the agency against which the claim is filed, or the attorney representing the agency against which the claim is filed.

(2) The agency against which a claim has been filed shall respond to the board and the claimant within thirty (30) days of receiving the claim.

(3) If the agency against which a claim is filed admits liability in its response, a final order shall be entered.

Section 6. Claims Not Requiring a Hearing Under KRS 49.090(3). (1) If the agency against which a claim is filed fails to respond within thirty (30) days, the board or a board member assigned by the chair shall:

- (a) Enter a show cause order;
- (b) Recommend an order of dismissal; or
- (c) Deem the facts contained in the claim admitted and render an award.

(2) If the response filed by the agency denies negligence in a claim not requiring a hearing pursuant to KRS 49.090(3), the board or board member shall decide the claim and render a decision.

(3) Within fourteen (14) days of the decision, any party may request a full board review by written notice to the board.

Section 7. Claims Requiring a Hearing under KRS 49.090(3). (1) If the agency fails to respond within thirty (30) days, the board shall issue a show cause order or the matter shall be assigned to a hearing officer.

(2) If the response filed by the agency denies negligence in a claim requiring a hearing pursuant to KRS 49.090(3), a hearing officer shall be assigned, and notice of the assignment shall be provided to the parties.

Section 8. Prehearing or Status Conference and Hearing Schedule. (1) The hearing officer shall schedule a prehearing or status conference, which may be conducted by telephone or other electronic means:

- (a) Within thirty (30) days of the assignment of the claim; and
- (b) Upon reasonable notice to all parties, which consists of prior notice of not less than five (5) days, unless agreed to otherwise by the parties.

(2) The hearing officer may convene the prehearing or status conference or order the affected state agency to convene the conference.

(3) A prehearing or status conference may be used to discuss jurisdictional matters, settlement possibilities, discovery, preparation of stipulations, clarification of issues, rulings on witnesses, taking of evidence, issuance of subpoenas, mediation, and other matters that will promote the orderly and prompt conduct of the hearing.

(4) The hearing officer and the parties shall set an agreed date for the hearing at the prehearing or status conference. If the hearing officer and parties cannot agree upon a hearing date, the hearing officer shall set the matter for hearing no later than six (6) months from the date of the conference, unless the parties have otherwise agreed to hold the claim in abeyance.

(5) Upon conclusion of the prehearing or status conference, the hearing officer shall issue an order including all matters determined at the prehearing or status conference.

(6) The hearing officer shall notify the board of the date and time for the hearing. The office shall:

- (a) Reserve a place within the proper venue to conduct the hearing;
- (b) Select a court reporter to be present at the hearing to record the proceedings; and
- (c) Notify the parties and the court reporter of the date, time, and place of the hearing.

Section 9. Motion Practice. (1) Any party may file a motion.

(2) Any party affected by a motion or pleading may file a response to the motion or pleading within thirty (30) days from the date on which the motion or pleading was served.

(3) A moving party may file a reply to another party's response. The reply shall be filed within fifteen (15) days from the date the response was served. Other replies or responses shall not be filed, unless prior approval is granted by the board or hearing officer.

(4) If a response is not filed within thirty (30) days, the board or hearing officer shall issue an order on the motion within sixty (60) days of the date the response was due.

Section 10. Discovery. (1) Discovery may be obtained without prior order of the board or hearing officer. Except to the extent the provisions of this Section differ, the Kentucky Rules of Civil Procedure (CR) governing depositions and discovery shall apply.

(2) In addition to the provisions of CR 26 addressing opinions and use of expert witnesses:

(a) Absent a stipulation between the parties or an order issued by the board providing otherwise, and at least ninety (90) days before the date set for the hearing, a party shall disclose to the other party or parties the identity of any witness qualified as an expert by knowledge, skill, experience, training, or education the party may use at the hearing to provide expert testimony; or

(b) If the evidence is intended solely to contradict or rebut evidence on the same subject matter of a witness identified by another party, within thirty (30) days after the other party's disclosure.

(3) The board or hearing officer may deny, limit, or require discovery.

(4) If a party fails to comply with an order regarding discovery, the board or hearing officer may order that the:

(a) Matters that the requesting party was seeking to establish through discovery shall be taken as having been established for the purposes of the hearing;

(b) Noncomplying party shall be prohibited from introducing related documents or testimony at the hearing;

(c) Claim be dismissed or relief be granted as requested by the opposing party;

(d) Claim be stayed until the order is obeyed; or

(e) Noncomplying party, the advising attorney, or both pay the reasonable costs, including attorney's fees, caused by the failure to comply.

(5) A response to discovery under subsection (1) of this section shall not be filed with the board unless required by order of the board or hearing officer.

Section 11. Briefs. A party shall file with the board or hearing officer any brief required by order of the board or hearing officer. The board or hearing officer may require a party to file a post-hearing brief or to supplement at any time a brief already filed to assist in adjudicating the hearing. A brief shall include the signature of the party, or the party's counsel.

Section 12. Summary Disposition. At any time after the commencement of the claim, a party may move for a summary disposition of the whole or a part of the claim by filing a motion that:

(1) Asserts that there are no disputed material facts as to one (1) or more of the issues before the board or hearing officer;

(2) Includes a statement specifying which material facts are undisputed. Assertions of a material undisputed fact or facts may be submitted to the board or hearing officer through affidavits or responses made by another party to any discovery request, including answers to interrogatories, admissions, and depositions. Facts stated in the claim, including exhibits, may be relied upon as undisputed material facts by the appellee; and

(3) States that any issue before the board or hearing officer for which summary disposition is sought is a matter of legal, and not factual, interpretation.

(4) Within twenty (20) days after a party moves for summary disposition, any other party may file a response presenting the party's position on issues of law and fact, which shall include any affidavit, written response to discovery requests, deposition testimony, or statements in the claim, demonstrating the party's assertion that a material fact or facts are disputed.

(5) If the nonmoving party files a response to the motion for summary disposition, the moving party shall have ten (10) days to file a reply to the response.

(6) The board or hearing officer may grant a motion for summary disposition in whole or in part. If the board or hearing officer grants a summary disposition as to one (1) or more issues, but not all issues, then the remaining issues shall be heard by the board or hearing officer in accordance with this administrative regulation and KRS Chapter 13B.

Section 13. Conduct of Hearing. Except as otherwise established in KRS Chapter 49 or this administrative regulation, the conduct of hearings shall be governed by the procedures established in KRS Chapter 13B.

Section 14. Board Decision. (1)(a) Each contested claim shall be submitted to the board at its next meeting following the submission of the recommended order, except for Agreed Orders.

(b) The board shall issue its final order in accordance with KRS 49.080.

(c) The stated deadlines within which the board shall render a final order shall commence upon the last filing of any exceptions to the recommendation.

(2) The board, or a majority of its members, shall render a decision on each contested claim requiring a hearing pursuant to KRS 49.090(3) and each request for a full board review of a claim decided by an individual member.

(3) In rendering the final order, the board shall consider the record including the recommended order and any exceptions duly filed to the recommended order.

(4) The board may accept the recommended order of the hearing officer and adopt it as the final order of the board, or it may reject or modify, in whole or in part, the recommended order, or it may remand the matter, in whole or in part, to the hearing officer for further proceedings as appropriate.

(5) If the final order differs from the recommended order, it shall include separate statements of findings of fact and conclusions of law. The final order shall also include the date the board rendered the order, the date it was served on the parties, and to whom it was served, and a statement advising the parties fully of available appeal rights.

(6) Unless waived by the party, a copy of the final order shall be transmitted to each party or to his attorney of record.

(7) The matter shall be deemed finally adjudicated if:

(a) In a claim under \$2,500, no full board review has been requested; or

(b) The claim has been the subject of full board review; or

(c) No judicial appeal has been filed.

Section 15. Payment of Awards. Within thirty (30) days after an order of the Board of Claims making an award has become final, the agency making payment of the award shall furnish to the Board of Claims a copy of any check reflecting the payments. (44 Ky.R. 2164, 2327; eff. 6-1-2018; 47 Ky.R. 798, 1384; eff. 4-6-2021.)